Pomeroy, Inc. *and* Local Union 346, Sheetmetal Workers International Association, AFL-CIO. Case 39-CA-684

June 10, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

Upon a charge filed on June 15, 1981, by Local Union 346, Sheetmetal Workers International Association, AFL-CIO, herein called the Union, and duly served on Pomeroy, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Officer-in-Charge for Subregion 39, issued a complaint on July 30, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that, at all times since 1971, the Union has been the exclusive collective-bargaining representative, for all employees in an appropriate unit[1] and that such recognition has been embodied in successive collective-bargaining agreements between Respondent and the Union, the most recent of which was effective for the period October 10, 1979, to October 10, 1980. The complaint also alleges that on October 27, 1980, Respondent and the Union reached full and complete agreement with respect to the terms and conditions of employment of the employees in the unit described below to be incorporated in a collective-bargaining agreement, and on or around late December 1980 and on April 14, 1981, the Union requested Respondent to execute a written contract which embodied said agreement; but that, since late December 1980, Respondent has refused to execute a written collective-bargaining agreement. The complaint alleges that by refusing to execute a written contract that embodies the agreement of the parties reached on October 27, 1980, Respondent has refused to bargain collectively, and is refusing to bargain collectively, in violation of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act. Respondent did not file an answer to the complaint.

On January 25, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on February 2, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, counsel for the General Counsel by certified letter dated December 31, 1981, informed Respondent that unless an answer to the complaint was received prior to the close of business on January 8, 1982, a Motion for Summary Judgment would be filed in this matter. When an answer was not received by the designated date, on January 13, 1982, counsel for the General Counsel attempted by telephone to reach Rex Cross, Respondent's president who was unavailable, and a message was left for Cross to return the telephone

[1] The complaint alleges that the following employees of Respondent constitutes an appropriate unit:

> All production and maintenance employees but excluding office clericals, watchmen, and supervisors and guards as defined by the Act.

call. To date, there has been no response to counsel for the General Counsel's call and as of January 25, 1982, the date of the Motion for Summary Judgment, Respondent has failed to file an answer to the complaint and to date has not indicated that it would file an answer. Respondent also failed to file a response to the Notice To Show Cause and, therefore, the allegations of the Motion for Summary Judgment stand uncontroverted.

Accordingly, under the rule set forth above, no good cause having been shown for failure to file an answer, the allegations of the complaint are deemed admitted and are found to be true and we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Respondent, Pomeroy, Inc., is a Connecticut corporation, with its principal place of business in Stamford, Connecticut, and has been engaged in the nonretail manufacture of steel windows and window balances. During the 12-month period ending June 30, 1981, Respondent, in the course of its business operations *supra*, purchased and received at its Stamford, Connecticut, facility goods and materials valued in excess of $50,000 directly from points outside the State of Connecticut.

II. THE LABOR ORGANIZATION INVOLVED

Local Union 346, Sheetmetal Workers International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees but excluding office clericals, watchmen, and supervisors and guards as defined by the Act.

2. The bargaining history

Since in or around 1971, and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in the unit described above, and since that date the Union has been recognized as such representative by Respondent. Such recognition has been embodied in successive collective-bargaining agreements with the Union and Respondent, the most recent of which was effective by its terms from October 10, 1979, to October 10, 1980. At all times since 1971 the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in the above-described unit for the purpose of collective-bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

B. *The Refusal To Bargain*

Since in or around December 1980 and April 14, 1981, Respondent has failed and refused to execute a written contract embodying the agreement reached between Respondent and the Union. By refusing to execute a written contract which embodies the parties agreement, Respondent has refused, and is continuing to refuse, to bargain collectively with the representative of its employees.

Accordingly, we find that Respondent has since December 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees, and that, by such a refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and we shall order that Respondent immediately execute the agreement embodying such terms and conditions of employment and that, in order to fully remedy its refusal to execute such agreement, Respondent shall make whole all employees covered by the aforesaid collective-bargaining agreement for the loss of any benefits which would have accrued to them under the contract had Respondent executed the same within a reasonable time after the Union's request for Respondent's signature, with interest to be computed thereon in the

manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[2]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Pomeroy, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union 346, Sheetmetal Workers International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to execute and sign the agreed-upon collective-bargaining agreement reached by Respondent and the Union in their negotiations, Respondent has violated, and is violating, Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pomeroy, Inc., Stamford, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully refusing to execute and sign the written agreement representing the terms and conditions theretofore agreed upon between the Union and Respondent.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, execute and sign a written contract, the terms and conditions of which were agreed upon between the Union and Respondent and give retroactive effect to its terms and conditions, and make its employees whole for any losses, if any, they may have suffered as a result of its refusal to sign such an agreement in the manner as set forth in the section of this Decision entitled "The Remedy."

(b) If no such request is made, bargain collectively in good faith with the Union, upon its request, as the exclusive representative of the employees in the appropriate unit, over the terms and conditions of a collective-bargaining agreement and, if an agreement is reached, embody it in a signed agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Stamford, Connecticut, copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Officer-in-Charge for Subregion 39, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Officer-in-Charge for Subregion 39, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[2] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local Union 346, Sheetmetal Workers International Association, AFL-CIO, as the ex-

clusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

By reason of our failure to execute the aforesaid agreement, WE WILL make whole our employees in the unit represented by Local Union 346, Sheetmetal Workers, for any loss of benefits which may have accrued to them by reason of our failure to execute the collective-bargaining agreement at the times the Union requested us to do so.

WE WILL, upon request, execute and retain in force for the period of its duration the collective-bargaining agreement which we formerly had agreed upon and which we refused to sign which was requested of us by Local Union 346 in December 1980 and again on April 14, 1981; give retroactive effect to its terms and conditions; and make our employees whole, with interest, for any losses they may have suffered as a result of our failure to sign the agreement.

If no such request to sign the agreement is made, WE WILL, upon request, bargain collectively with the Union over the terms of an agreement, and, if an agreement is reached, WE WILL sign the agreement. The bargaining unit is:

> All production and maintenance employees but excluding office clericals, watchmen, and supervisors and guards as defined in the Act.

POMEROY, INC.